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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,510

11/14/2003

Thomas M. Sauter

KCOS121897

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07/30/2008

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT

PAPER NUMBER

3618

MAIL DATE

DELIVERY MODE

07/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/714,510	<b>Applicant(s)</b> SAUTER, THOMAS M.	
	<b>Examiner</b> Frank B. Vanaman	<b>Art Unit</b> 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-30 is/are pending in the application.  
4a) Of the above claim(s) 4-14, 21 and 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-26 and 29 is/are allowed.
- 6) ☒ Claim(s) 1, 17, 19, 23, 27, 28 and 30 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 15, 16, 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Status of Application***

1. Applicant's amendment, filed April 29, 2008, has been entered in the application. Claims 1-17 and 19-30 are pending, claims 4-14, 21 and 22 are withdrawn from consideration.

***Claim Rejections - 35 USC § 102 and/or 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 17, 19, 23, 27, 28 and 30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Couderc et al. (US PGPub 2001/0009320).

Couderc et al. teach a binding strap device for use with a binding system designed to hold a boot (2, phantom) on a snowboard (3, 9) and having a base-plate (4, 7), the strap element (figure 7) including toe and ankle straps (103, 102) each having a movable end (left most end of 103, 102, figure 7) each end being connected to one or more linkages (in this case, at least element 106), wherein the movable ends are allowed to travel, and a strap-tension-producing fastener (104, 105) which is located on an opposite end or opposite ends of one of the toe and/or heel strap portions (at 101), and wherein the operation of the fastener to tension one or the other straps causes a tension to be produced in the other of the straps, and wherein operation of the fastener to release tension in one of the straps causes tension to be released in that strap and the other of the straps, wherein travel of the movable end associated with one or the other of the straps causes motion of the linkage (106) connected to the other strap, the linkage constituting one or more cables (see paragraphs 0073-0077).

The examiner notes that the alternative strap portion taught by the illustration of figure 7 is understood to be anticipated by Couderc et al. as usable with the base-plate and boot as shown in figures 1-3, as such, while figure 7 fails to explicitly illustrate the boot and base-plate, it is understood that Couderc et al. anticipate a binding device which includes both the alternative strap as well as the boot and base-plate.

As regards each of the toe and heel straps having first and second ends, to the breadth this limitation is actually recited in the claims, each strap element (102, 103)

has a pair of ends: strap element 102 has one end at the left most portion (as seen in the figure) of 102, and one at 101 or, alternatively one end at the intersection of 102 and 101; similarly, strap element 103 has one end at the left most portion (as seen in the figure) of 103, and one at 101, or, alternatively one end at the intersection of 103 and 101.

Alternatively to the above, the reference to Couderc fails to teach that each strap has a separate end. This limitation is not explicitly recited in the claims, however an alternate interpretation of the claim language narrower than the broadest reasonable one may suggest this condition. Couderc et al., however teach an alternate embodiment (see figure 6) wherein an arrangement includes toe and ankle straps (91, 88) wherein each strap has two ends, and each end being separate from the other. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide each strap with a separate, non-coincident end as taught by the alternate embodiment of Couderc et al. (figure 6) for the purpose of allowing greater flexibility in the initial movement of the straps (at joints 89, 92) prior to fastening, and/or to allow separate replacement of the straps, and/or for the purpose of allowing the tension in each section to be balanced upon fastening.

#### ***Allowable Subject Matter***

4. Claims 24-26 and 29 are allowed.
5. Claims 2, 3, 15, 16 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Comments***

6. Applicant's comments, filed with the amendment, have been carefully considered. Applicant asserts that the reference to Couderc et al. cannot anticipate the claims, however the breadth of applicant's recitation continues to allow the above interpretation[s]. Each strap element (102, 103) has a pair of ends: strap element 102 has one end at the left most portion (as seen in the figure) of 102, and one at 101 or, alternatively one end at the intersection of 102 and 101; similarly, strap element 103 has one end at the left most portion (as seen in the figure) of 103, and one at 101, or,

alternatively one end at the intersection of 103 and 101. Further, applicant is reminded that a linear element of finite length, if it has a first end, will have a second end. Both elements 103 and 102 are (a) linear and (b) of finite length, and certainly each has two ends. If applicant indeed believes that each strap 102, 103 does not actually have a second end as illustrated at the right side of element 100 and/or at the intersection of 102 and 101 (and/or at the intersection of 103 and 101), then applicant should explicitly so state on the record, and further specify which strap does not end.

7. With the arguments advanced by applicant, it appears as though applicant is suggesting that the examiner read limitations into the claims, even though the limitations to the breadth they are argued, either explicitly or implicitly, are not actually recited to the same level of scope.

From MPEP 2111: During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)

The examiner notes that despite there being allowable subject matter clearly indicated both in claims wholly allowed and in claims objected to for their dependency on rejected claims, applicant has failed to place the application in condition for allowance.

In this case, it appears as though applicant may desire to appeal the claim rejections, in which case, applicant may desire to note the content of 37 CFR 41.31, which is reproduced, in part, below:

"37 CFR 41.31 Appeal to Board.

(a) Who may appeal and how to file an appeal.

(1) Every applicant, any of whose claims has been twice rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply."

Applicant's claims have been rejected many more times than twice, and as such, applicant would be well in a position to appeal the examiner's decision advanced herein.

### ***Conclusion***

8. Applicant's amendment necessitated the new and/or modified ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**

/Frank B Vanaman/  
Primary Examiner, Art Unit 3618